

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

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LEE HARTWELL,  
IN HIS INDIVIDUAL CAPACITY,

Plaintiff,

vs.

THE CITY OF MONTGOMERY,  
ALABAMA, PERSONNEL  
BOARD OF THE CITY AND  
COUNTY OF MONTGOMERY,  
ALABAMA, and DISTRICT CHIEF  
KELLY D. GORDON, IN HIS  
INDIVIDUAL CAPACITY,

Defendants.

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

CIVIL ACTION NO.  
2:06cv518-MHT

**MOTION TO STRIKE AFFIDAVIT TESTIMONY**

COMES NOW the Plaintiff in the above styled action and moves the Court to strike those portions of Assistant Fire Chief Carl Walker's Affidavit, as statements within that Affidavit and the memos that are attached and attempted to be incorporated within contain blatant hearsay. The Defendant signing the Affidavit gives information that he does not have personal knowledge of and that is in violation of Rule 802, *Federal Rules of Evidence*.


1. In the August 22, 2005, memo Assistant Fire Chief Carl Walker relies completely on hearsay statements in Paragraph 2 in its entirety, as none of the information set forth there is from the personal knowledge of Assistant Fire Chief Carl Walker and all of that information is hearsay and inadmissible based upon Rule 802, *Federal Rules of Evidence*.
2. Paragraph 4 of the Affidavit is also entirely hearsay and inadmissible based upon Rule 802, *Federal Rules of Evidence*.
3. At Paragraph 6, Assistant Fire Chief Carl Walker relies completely on hearsay statements, which are inadmissible. The statement, "That is when I bluffed him

and played the race card. I asked Captain Dennis if he was a racist, even though I knew he was not," was not a statement that was made and even the Defendants allegations do not claim that it was made to Assistant Fire Chief Carl Walker. That paragraph in its entirety is inadmissible based upon Rule 802, *Federal Rules of Evidence*.

4. The August 17, 2004, memo, which Assistant Fire Chief Carl Walker attempts to incorporate within his Affidavit, contains extensive amounts of blatant hearsay, which is inadmissible in this cause pursuant to Rule 802, *Federal Rules of Evidence*. In Paragraph 2, Assistant Fire Chief Carl Walker refers to statements made by District Chief John Petry.
5. Paragraph 3 of the August 17, 2004, memo relates what Hartwell was informed by District Chiefs and there is no statement that such was made within the presence of Assistant Fire Chief Carl Walker. His statements as to what other District Chiefs might have said to Plaintiff Hartwell could only be based upon hearsay and inadmissible.

The sections pointed out in the Affidavit and the memos attempted to be incorporated within the Affidavit are inadmissible and a Motion to Strike should be granted to the Plaintiff for each of those sections.

Respectfully submitted on this the 25<sup>th</sup> day of January, 2007.

  
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Attorney for the Plaintiff Lee Hartwell

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing on the following counsel of record, by placing a copy of same in the United States Mail, postage prepaid and properly addressed on this the 25<sup>th</sup> day of January, 2007:

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\_\_\_\_\_  
OF COUNSEL